

ERIC ZIMBELMAN, ESQ.  
Nevada Bar No. 9407  
**PEEL BRIMLEY LLP**  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074-6571  
Telephone: (702) 990-7272  
Facsimile: (702) 990-7273  
[ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
*Attorneys for Defendant*  
*Mollerup Glass Company*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

THE WHITING-TURNER CONTRACTING  
COMPANY, a Maryland corporation,

Plaintiff,

vs.

MOLLERUP GLASS COMPANY, a Utah  
corporation; EMPLOYERS MUTUAL  
CASUALTY COMPANY, an Iowa  
corporation; and DOES 1-25, inclusive,

Defendants.

MOLLERUP GLASS COMPANY, a Utah  
corporation;

Third-Party Plaintiff,

vs.

NORTHWESTERN INDUSTRIES-  
ARIZONA, INC, an Arizona corporation;  
DOES 1 through 100, inclusive.

Third-Party Defendant

Case No. 2:25-cv-00111

**DEFENDANT MOLLERUP GLASS  
COMPANY'S ANSWER, AFFIRMATIVE  
DEFENSES AND THIRD-PARTY  
COMPLAINT**

Defendant, MOLLERUP GLASS COMPANY ("Mollerup"), by and through its attorneys of the law firm PEEL BRIMLEY LLP, hereby Answers the Complaint [ECF No. 1] of Plaintiff The Whiting-Turner Contracting Company ("WTCC") on file herein, and admits, denies and alleges as follows:

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**PARTIES**

1  
2           1.       Answering Paragraph 2 of the Complaint, Mollerup admits that WTCC is a  
3 Maryland Corporation but Mollerup lacks sufficient information to form a belief as to the truth of  
4 the remaining allegations contained therein and therefore denies the same.

5           2.       Answering Paragraph 3 of the Complaint, Mollerup admits that it is a Utah  
6 corporation authorized to conduct business in Clark County, Nevada at all relevant times herein.

7           3.       Answering Paragraph 4 of the Complaint, Mollerup admits that it maintains a valid  
8 Nevada Contractor License, license number 0053326 (C-8 Glass and Glazing).

9           4.       Answering Paragraph 5 of the Complaint, Mollerup admits that Employers Mutual  
10 Casualty Surety Company (“EMCC”) is an Iowa surety authorized to conduct business as a surety  
11 in Nevada and issued Performance Bond #S024665 in the amount of \$5,831,700 (the  
12 “Performance Bond”). Mollerup lacks sufficient information to form a belief as to the truth of the  
13 remaining allegations contained therein and therefore denies the same.

14           5.       Answering Paragraph 6 of the Complaint, Mollerup lacks sufficient information to  
15 form a belief as to the truth of the allegations contained therein and therefore denies the same.

16           6.       Answering Paragraph 7 of the Complaint, Mollerup states that the allegations  
17 contained therein call for a legal conclusion and therefore, no response is required. To the extent  
18 a response is required, Defendant denies the same.

19           7.       Answering Paragraph 8 of the Complaint, Mollerup states that the allegations  
20 contained therein call for a legal conclusion and therefore, no response is required. To the extent  
21 a response is required, Defendant lacks sufficient information to form a belief as to the truth of  
22 the allegations contained therein and therefore denies the same.

23           8.       Answering Paragraph 9 of the Complaint, Mollerup states that the allegations  
24 contained therein call for a legal conclusion and therefore, no response is required. To the extent  
25 a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the  
26 allegations contained therein and therefore denies the same.

27       ///

28       ///

**JURISDICTION AND VENUE**

9. Answering Paragraph 10 of the Complaint Mollerup states that the allegations contained therein call for a legal conclusion and therefore, no response is required. To the extent a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

10. Answering Paragraph 11 of the Complaint, Mollerup states that the subcontract referenced therein and attached to WTCC's Complaint as Exhibit 1 ("the Subcontract"), to the extent it is authentic, speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

11. Answering Paragraph 12 of the Complaint, Mollerup states that the allegations contained therein call for a legal conclusion and therefore, no response is required. To the extent a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

12. Answering Paragraph 13 of the Complaint, Mollerup denies that the Eighth Judicial District Court of Nevada has jurisdiction of this matter because Defendants removed the same to this (federal) court. Defendants admit that this court (the United States District Court for the District of Nevada) has jurisdiction as to the subject matter of this action and personal jurisdiction over the parties to this action.

**BACKGROUND ALLEGATIONS**

13. Answering Paragraph 14 of the Complaint, Mollerup admits that this action pertains to the construction of a commercial office building (the "Project") but lacks sufficient information to form a belief as to the truth of the remaining allegations contained therein and therefore denies the same.

14. Answering Paragraph 15 of the Complaint, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

15. Answering Paragraph 16 of the Complaint, Mollerup admits that it contracted with WTCC to provide certain work, materials and/or equipment to the Project, including the installation of insulated glass units ("IGUs"). Mollerup further admits that the initially contracted-

1 for amount of the Subcontract was \$5,831,700. Mollerup denies the remaining allegations of this  
2 paragraph and states that the Subcontract speaks for itself. Mollerup denies any  
3 mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

4 16. Answering Paragraph 17 of the Complaint, Mollerup states that the Subcontract  
5 speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent  
6 allegations with the Subcontract.

7 17. Answering Paragraph 18 of the Complaint, Mollerup states that the Subcontract  
8 speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent  
9 allegations with the Subcontract.

10 18. Answering Paragraph 19 of the Complaint, Mollerup states that the Subcontract  
11 speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent  
12 allegations with the Subcontract.

13 19. Answering Paragraph 20 of the Complaint, Mollerup admits that EMCC issued the  
14 Performance Bond and states that the Performance Bond speaks for itself. Mollerup denies any  
15 mischaracterization of the Performance Bond and any inconsistent allegations with the  
16 Performance Bond.

17 20. Answering Paragraph 21 of the Complaint, Mollerup lacks sufficient information  
18 to form a belief as to the truth of the allegations contained therein and therefore denies the same.

19 21. Answering Paragraph 22 of the Complaint, Mollerup lacks sufficient information  
20 to form a belief as to the truth of the allegations contained therein, some of which may require  
21 expert testimony, and therefore denies the same.

22 22. Answering Paragraph 23 of the Complaint, Mollerup admits that WTCC reported  
23 that a very small percentage of IGUs have broken since installation but denies the remaining  
24 allegations of this paragraph.

25 23. Answering Paragraph 24 of the Complaint, Mollerup lacks sufficient information  
26 to form a belief as to the truth of the allegations contained therein, some of which may require  
27 expert testimony, and therefore denies the same.

28 24. Answering Paragraph 25 of the Complaint, Mollerup denies the allegations

1 contained therein.

2 25. Answering Paragraph 26 of the Complaint, Mollerup denies the allegations  
3 contained therein.

4 26. Answering Paragraph 27 of the Complaint, Mollerup denies the allegations  
5 contained therein.

6 27. Answering Paragraph 28 of the Complaint, Mollerup denies that it caused WTCC's  
7 otherwise voluntary removal and replacement of unbroken IGUs and affirmatively states that it  
8 (Mollerup) has promptly removed and replaced each and every broken IGU at its own expense.  
9 Mollerup lacks sufficient information to form a belief as to the truth of the remaining allegations  
10 contained therein and therefore denies the same.

11 28. Answering Paragraph 29 of the Complaint, Mollerup admits that it has made  
12 reasonable efforts to resolve the dispute, including promptly repairing and replacing each and  
13 every broken IGU at its own expense, and that WTCC's unreasonable demand for replacement of  
14 all unbroken IGUs (which form the vast majority of IGUs at the Project) has prevented resolution  
15 of the dispute.

16 29. Answering Paragraph 30 of the Complaint, Mollerup denies the allegations therein.

17 **FIRST CAUSE OF ACTION (Breach of Contract)**

18 30. Answering Paragraph 31 of the Complaint, Mollerup repeats and re-alleges each  
19 and every response contained in the preceding paragraphs and incorporates the same by reference

20 31. Answering Paragraph 32 of the Complaint, Mollerup admits it entered the  
21 Subcontract with WTCC, which Subcontract speaks for itself. Mollerup denies any  
22 mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

23 32. Answering Paragraph 33 of the Complaint, Mollerup denies the allegations therein.

24 33. Answering Paragraph 34 of the Complaint, Mollerup denies the allegations therein.

25 34. Answering Paragraph 35 of the Complaint, Mollerup denies the allegations therein.

26 Further, Mollerup affirmatively states that it promptly repaired and/or replaced each and every  
27 broken IGU at its own expense, and that it has no obligation to repair or replace the unbroken  
28 IGUs (which form the vast majority of IGUs at the Project) as WTCC unreasonably demands.

35. Answering Paragraph 36 of the Complaint, Mollerup denies the allegations therein.

36. Answering Paragraph 37 of the Complaint, Mollerup denies the allegations therein.

37. Answering Paragraph 38 of the Complaint, Mollerup specifically denies that it has any obligation to accede to WTCC's unreasonable demands and otherwise denies the allegations of this paragraph.

### **SECOND CAUSE OF ACTION (Good Faith and Fair Dealing)**

38. Answering Paragraph 39 of the Complaint, Mollerup repeats and re-alleges each and every response contained in the preceding paragraphs and incorporates the same by reference

39. Answering Paragraph 40 of the Complaint, Mollerup admits it entered the Subcontract with WTCC, which Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

40. Answering Paragraph 41 of the Complaint, Mollerup denies the allegations therein.

41. Answering Paragraph 42 of the Complaint, Mollerup denies the allegations therein.

42. Answering Paragraph 43 of the Complaint, Mollerup denies the allegations therein.

43. Answering Paragraph 44 of the Complaint, Mollerup denies the allegations therein.

44. Answering Paragraph 45 of the Complaint, Mollerup denies the allegations therein.

45. Answering Paragraph 46 of the Complaint, Mollerup denies the allegations therein.

46. Answering Paragraph 47 of the Complaint, Mollerup denies the allegations therein.

47. Answering Paragraph 48 of the Complaint, Mollerup specifically denies that it has any obligation to accede to WTCC's unreasonable demands and otherwise denies the allegations of this paragraph.

### **THIRD CAUSE OF ACTION (Breach of Warranty)**

48. Answering Paragraph 49 of the Complaint, Mollerup repeats and re-alleges each and every response contained in the preceding paragraphs and incorporates the same by reference

49. Answering Paragraph 50 of the Complaint, Mollerup denies the allegations therein.

50. Answering Paragraph 51 of the Complaint, Mollerup states that Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

PEEL BRIMLEY LLP  
 3333 E. SERENE AVENUE, STE. 200  
 HENDERSON, NEVADA 89074  
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51. Answering Paragraph 52 of the Complaint, Mollerup states that Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

52. Answering Paragraph 53 of the Complaint, Mollerup denies the allegations therein.

53. Answering Paragraph 54 of the Complaint, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein, some of which may require expert testimony, and therefore denies the same.

54. Answering Paragraph 55 of the Complaint, Mollerup denies the allegations therein.

55. Answering Paragraph 56 of the Complaint, Mollerup denies the allegations therein.

56. Answering Paragraph 57 of the Complaint, Mollerup denies the allegations therein.

57. Answering Paragraph 58 of the Complaint, Mollerup denies the allegations therein.

58. Answering Paragraph 59 of the Complaint, Mollerup specifically denies that it has any obligation to accede to WTCC's unreasonable demands and otherwise denies the allegations of this paragraph.

#### **FOURTH CAUSE OF ACTION (Express Indemnity)**

59. Answering Paragraph 60 of the Complaint, Mollerup repeats and re-alleges each and every response contained in the preceding paragraphs and incorporates the same by reference

60. Answering Paragraph 61 of the Complaint, Mollerup admits it entered the Subcontract with WTCC, which Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

61. Answering Paragraph 62 of the Complaint, Mollerup admits it entered the Subcontract with WTCC, which Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

62. Answering Paragraph 63 of the Complaint, Mollerup denies the allegations therein.

63. Answering Paragraph 64 of the Complaint, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein, some of which may require expert testimony, and therefore denies the same.

64. Answering Paragraph 65 of the Complaint, Mollerup denies the allegations therein.



1           65.     Answering Paragraph 66 of the Complaint, Mollerup denies the allegations therein.

2           66.     Answering Paragraph 67 of the Complaint, Mollerup denies the allegations therein.

3           67.     Answering Paragraph 68 of the Complaint, Mollerup denies the allegations therein.

4           68.     Answering Paragraph 70 of the Complaint, Mollerup specifically denies that it has  
5 any obligation to accede to WTCC's unreasonable demands and otherwise denies the allegations  
6 of this paragraph.

7                           **FIFTH CAUSE OF ACTION (Equitable Indemnity)**

8           69.     Answering Paragraph 70 of the Complaint, Mollerup repeats and re-alleges each  
9 and every response contained in the preceding paragraphs and incorporates the same by reference

10          70.     Answering Paragraph 71 of the Complaint, Mollerup lacks sufficient information  
11 to form a belief as to the truth of the allegations contained therein, some of which may require  
12 expert testimony, and therefore denies the same.

13          71.     Answering Paragraph 72 of the Complaint, Mollerup denies that it caused WTCC's  
14 otherwise voluntary removal and replacement of unbroken IGUs and affirmatively states that it  
15 (Mollerup) has promptly removed and replaced each and every broken IGU at its own expense.  
16 Mollerup lacks sufficient information to form a belief as to the truth of the remaining allegations  
17 contained therein and therefore denies the same.

18          72.     Answering Paragraph 73 of the Complaint, Mollerup denies that it failed to in good  
19 faith or in compliance with the subcontract or industry standards. Mollerup lacks sufficient  
20 information to form a belief as to the truth of the remaining allegations contained therein, some  
21 of which may require expert testimony, and therefore denies the same.

22          73.     Answering Paragraph 74 of the Complaint, Mollerup denies the allegations therein.

23          74.     Answering Paragraph 75 of the Complaint, Mollerup denies the allegations therein.

24          75.     Answering Paragraph 76 of the Complaint, Mollerup denies the allegations therein.

25          76.     Answering Paragraph 77 of the Complaint, Mollerup denies the allegations therein.

26          77.     Answering Paragraph 78 of the Complaint, Mollerup specifically denies that it has  
27 breached its obligations or has any obligation to accede to WTCC's unreasonable demands and  
28 otherwise denies the allegations of this paragraph. Mollerup lacks sufficient information to form



1 a belief as to the truth of the remaining allegations contained therein and therefore denies the  
2 same.

3 **SIXTH CAUSE OF ACTION (Implied Indemnity)**

4 78. Answering Paragraph 79 of the Complaint, Mollerup repeats and re-alleges each  
5 and every response contained in the preceding paragraphs and incorporates the same by reference

6 79. Answering Paragraph 80 of the Complaint, Mollerup lacks sufficient information  
7 to form a belief as to the truth of the allegations contained therein, some of which may require  
8 expert testimony, and therefore denies the same.

9 80. Answering Paragraph 81 of the Complaint, Mollerup denies that it caused WTCC's  
10 otherwise voluntary removal and replacement of unbroken IGUs and affirmatively states that it  
11 (Mollerup) has promptly removed and replaced each and every broken IGU at its own expense.  
12 Mollerup lacks sufficient information to form a belief as to the truth of the remaining allegations  
13 contained therein and therefore denies the same.

14 81. Answering Paragraph 82 of the Complaint, Mollerup denies that it failed to act in  
15 good faith or in compliance with the Subcontract, industry standards, and pursuant to its legal  
16 obligations. Mollerup lacks sufficient information to form a belief as to the truth of the remaining  
17 allegations contained therein, some of which may require expert testimony, and therefore denies  
18 the same.

19 82. Answering Paragraph 83 of the Complaint, Mollerup denies the allegations therein.

20 83. Answering Paragraph 84 of the Complaint, Mollerup denies the allegations therein.

21 84. Answering Paragraph 85 of the Complaint, Mollerup denies the allegations therein.

22 85. Answering Paragraph 86 of the Complaint, Mollerup denies the allegations therein.

23 86. Answering Paragraph 87 of the Complaint, Mollerup denies the allegations therein.

24 87. Answering Paragraph 88 of the Complaint, Mollerup specifically denies that it has  
25 breached its obligations or has any obligation to accede to WTCC's unreasonable demands and  
26 otherwise denies the allegations of this paragraph. Mollerup lacks sufficient information to form  
27 a belief as to the truth of the remaining allegations contained therein and therefore denies the  
28 same.

**SEVENTH CAUSE OF ACTION (Unjust Enrichment)**

88. Answering Paragraph 89 of the Complaint, Mollerup repeats and re-alleges each and every response contained in the preceding paragraphs and incorporates the same by reference.

89. Answering Paragraph 90 of the Complaint, Mollerup states that the allegations contained therein call for a legal conclusion and therefore, no response is required. To the extent a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

90. Answering Paragraph 91 of the Complaint, Mollerup admits it entered the Subcontract with WTCC, which Subcontract speaks for itself. Mollerup denies any mischaracterization of the Subcontract and any inconsistent allegations with the Subcontract.

91. Answering Paragraph 92 of the Complaint, Mollerup admits that EMCC issued the Performance Bond and states that the Performance Bond speaks for itself. Mollerup denies any mischaracterization of the Performance Bond and any inconsistent allegations with the Performance Bond.

92. Answering Paragraph 93 of the Complaint, Mollerup denies the allegations therein.

93. Answering Paragraph 94 of the Complaint, Mollerup denies the allegations therein.

94. Answering Paragraph 95 of the Complaint, Mollerup denies the allegations therein.

95. Answering Paragraph 96 of the Complaint, Mollerup admits it received payment from WTCC but denies the remaining allegations of this paragraph.

96. Answering Paragraph 97 of the Complaint, Mollerup denies the allegations therein.

97. Answering Paragraph 98 of the Complaint, Mollerup denies the allegations therein.

98. Answering Paragraph 99 of the Complaint, Mollerup denies the allegations therein.

99. Answering Paragraph 100 of the Complaint, this paragraph is a prayer for relief, and not a factual or legal allegation to which Mollerup is obligated to respond. To the extent a response is required, Mollerup denies the allegations therein.

100. Answering Paragraph 101 of the Complaint, Mollerup denies the allegations therein.

101. Answering Paragraph 102 of the Complaint, Mollerup specifically denies that it

1 has breached its obligations or has any obligation to accede to WTCC's unreasonable demands  
2 and otherwise denies the allegations of this paragraph. Mollerup lacks sufficient information to  
3 form a belief as to the truth of the remaining allegations contained therein and therefore denies  
4 the same.

5 **EIGHTH CAUSE OF ACTION (Negligence)**

6 102. Answering Paragraph 103 of the Complaint, Mollerup repeats and re-alleges each  
7 and every response contained in the preceding paragraphs and incorporates the same by reference.

8 103. Answering Paragraph 104 of the Complaint, Mollerup lacks sufficient information  
9 to form a belief as to the truth of the allegations contained therein, some of which may require  
10 expert testimony, and therefore denies the same.

11 104. Answering Paragraph 105 of the Complaint, Mollerup states that the allegations  
12 contained therein call for a legal conclusion and therefore, no response is required. To the extent  
13 a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the  
14 allegations contained therein and therefore denies the same.

15 105. Answering Paragraph 106 of the Complaint, Mollerup states that the allegations  
16 contained therein call for a legal conclusion and therefore, no response is required. To the extent  
17 a response is required, Mollerup lacks sufficient information to form a belief as to the truth of the  
18 allegations contained therein and therefore denies the same.

19 106. Answering Paragraph 107 of the Complaint, Mollerup denies the allegations  
20 therein.

21 107. Answering Paragraph 108 of the Complaint, Mollerup denies the allegations  
22 therein.

23 108. Answering Paragraph 109 of the Complaint, Mollerup denies the allegations  
24 therein.

25 109. Answering Paragraph 110 of the Complaint, Mollerup denies that it caused  
26 WTCC's otherwise voluntary removal and replacement of unbroken IGUs and affirmatively states  
27 that it (Mollerup) has promptly removed and replaced each and every broken IGU at its own  
28 expense. Mollerup lacks sufficient information to form a belief as to the truth of the remaining

1 allegations contained therein and therefore denies the same.

2 110. Answering Paragraph 111 of the Complaint, Mollerup denies the allegations  
3 therein.

4 **NINTH CAUSE OF ACTION (Claim Against Performance Bond)**

5 111. Answering Paragraph 112 of the Complaint, Mollerup repeats and re-alleges each  
6 and every response contained in the preceding paragraphs and incorporates the same by reference.

7 112. Answering Paragraph 113 of the Complaint, Mollerup states that these allegations  
8 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
9 a response from Mollerup is required, Mollerup states that the Performance Bond speaks for itself.  
10 Mollerup denies any mischaracterization of the Performance Bond and any inconsistent  
11 allegations with the Performance Bond.

12 113. Answering Paragraph 114 of the Complaint, Mollerup states that these allegations  
13 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
14 a response from Mollerup is required, Mollerup states that the Performance Bond speaks for itself.  
15 Mollerup denies any mischaracterization of the Performance Bond and any inconsistent  
16 allegations with the Performance Bond.

17 114. Answering Paragraph 115 of the Complaint, Mollerup states that these allegations  
18 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
19 a response from Mollerup is required, Mollerup states that the Performance Bond speaks for itself.  
20 Mollerup denies any mischaracterization of the Performance Bond and any inconsistent  
21 allegations with the Performance Bond.

22 115. Answering Paragraph 116 of the Complaint, Mollerup states that these allegations  
23 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
24 a response from Mollerup is required, Mollerup states that the Performance Bond speaks for itself.  
25 Mollerup denies any mischaracterization of the Performance Bond and any inconsistent  
26 allegations with the Performance Bond.

27 116. Answering Paragraph 117 of the Complaint, Mollerup states that these allegations  
28 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent

1 a response from Mollerup is required, Mollerup denies that it caused WTCC's otherwise voluntary  
2 removal and replacement of unbroken IGUs and affirmatively states that it (Mollerup) has  
3 promptly removed and replaced each and every broken IGU at its own expense. Mollerup lacks  
4 sufficient information to form a belief as to the truth of the remaining allegations contained therein  
5 and therefore denies the same.

6 117. Answering Paragraph 118 of the Complaint, Mollerup states that these allegations  
7 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
8 a response from Mollerup is required, Mollerup lacks sufficient information to form a belief as to  
9 the truth of the allegations contained therein and therefore denies the same.

10 118. Answering Paragraph 119 of the Complaint, Mollerup states that these allegations  
11 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
12 a response from Mollerup is required, Mollerup denies the allegations therein.

13 119. Answering Paragraph 120 of the Complaint, Mollerup states that these allegations  
14 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
15 a response from Mollerup is required, Mollerup denies the allegations therein.

16 120. Answering Paragraph 121 of the Complaint, Mollerup states that these allegations  
17 are not directed to Mollerup and, therefore no response from Mollerup is required. To the extent  
18 a response from Mollerup is required, Mollerup denies the allegations therein.

19 **TENTH CAUSE OF ACTION (Declaratory Relief)**

20 121. Answering Paragraph 122 of the Complaint, Mollerup repeats and re-alleges each  
21 and every response contained in the preceding paragraphs and incorporates the same by reference.

22 122. Answering Paragraph 123 of the Complaint, Mollerup denies the allegations  
23 therein.

24 123. Answering Paragraph 124 of the Complaint, Mollerup denies the allegations  
25 therein.

26 124. Answering Paragraph 125 of the Complaint, Mollerup denies the allegations  
27 therein.

28 125. Answering Paragraph 126 of the Complaint, Mollerup denies the allegations

1 therein.

2 **AFFIRMATIVE DEFENSES**

3 Having answered Plaintiff's Complaint, Mollerup hereby asserts the following  
4 Affirmative Defenses:

5 1. Plaintiff's Complaint on file herein fails to state a claim upon which relief can be  
6 granted.

7 2. Plaintiff's claims are barred as a result of fraud and/or illegality.

8 3. Plaintiff's claims as alleged in its Complaint, and the damages alleged therein, if  
9 any in fact exist, are the direct and proximate result of Plaintiff's own intentional, willful and/or  
10 negligent acts and deeds.

11 4. Plaintiff's claims as alleged in its Complaint, and the loss and damage, if any in  
12 fact exist, are the direct and proximate result of the acts, deeds, omissions or failure to act, or the  
13 conduct of third parties, including parties whose identities and/or names are presently unknown,  
14 over whom Mollerup had no control, nor the right, duty or obligation to control.

15 5. The Plaintiff has breached the Subcontract and therefore Mollerup is afforded a  
16 complete and/or partial defense to the claims of Plaintiff stated in the Complaint.

17 6. The claims of Plaintiff as alleged in the Complaint, and the loss and damage, if any  
18 in fact exist, are the direct and proximate result of intervening and superseding acts, over which  
19 Mollerup had no control.

20 7. Plaintiff failed to mitigate the damages incurred, if any, and therefore, any recovery  
21 awarded to Plaintiff against Mollerup, if any, should be reduced by that amount not mitigated.

22 8. The Complaint and the causes of action therein are barred under the Economic  
23 Loss Doctrine under Nevada law in a commercial construction project, and as such Plaintiff cannot  
24 recover on its claims arising from alleged negligence of Mollerup.

25 9. Plaintiff's claims are barred by the applicable limitations period.

26 10. The Plaintiff has waived its damages in whole or in part against Mollerup and is  
27 therefore legally prevented from prevailing in this action.

28 11. Plaintiff has failed to act in good faith in this matter and has denied Mollerup the

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3333 E. SERENE AVENUE, STE. 200  
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1 benefit of its bargain in entering into the Subcontract

2 12. Plaintiff has breached the Subcontract and/or interfered with Mollerup's rights  
3 under the Subcontract to Mollerup's detriment, and as such has caused and/or increased its damage  
4 in this matter, if any, and Mollerup therefore has no liability in this matter.

5 13. Plaintiff is seeking betterment of the work provided by Mollerup and therefore is  
6 not entitled to recover from Mollerup to the extent of such betterment.

7 14. Plaintiff has spoliated evidence in this matter and as such should be denied relief  
8 as pled.

9 15. Plaintiff's Complaint seeks recovery of damages specifically bared by the  
10 Subcontract, including but not limited to consequential damages.

11 16. Plaintiff has failed to submit warranty claims to the IGU manufacturer and/or  
12 others as required by the Subcontract and has thereby breached the agreement and failed to  
13 mitigate its damages.

14 17. Plaintiff has failed to submit this controversy to applicable insurance as required  
15 by the Subcontract and as such Mollerup has no independent liability.

16 18. Plaintiff has asserted defects in construction that do not exist or that are caused by  
17 misuse, abuse, normal wear and tear or the work of Plaintiff and/or its agents outside of the control  
18 of Mollerup and for which Mollerup has no liability under the Contract, or otherwise.

19 19. Plaintiff has no damages in this matter, as it received performance as required by  
20 the Subcontract and within the standards of the construction industry applicable to the Project  
21 and/or that were contemplated by the design of the Project as provided by Plaintiff.

22 20. Plaintiff's claims are barred by application of the Spearin doctrine. Specifically,  
23 but without limitation, Plaintiff's claims are barred because Plaintiff breached its own contractual  
24 and implied obligations to Mollerup and Mollerup is not liable for defects in the plans and  
25 specifications furnished by Plaintiff or Plaintiff's representatives relied upon by Mollerup to  
26 construct the project pursuant to those plans and specifications, and, as a result, Mollerup is  
27 released or discharged from its obligations, if any, to Plaintiff.

28 21. Plaintiff's causes of action fail as a matter of law under the doctrine of election of



1 remedies.

2 22. Plaintiff's causes of action fail as a matter of law under the doctrines of  
3 accord and satisfaction, equitable estoppel, laches, release, and are otherwise time barred by the  
4 statute of limitations.

5 23. Plaintiff expressly or implicitly approved of all work performed and all materials  
6 supplied by Mollerup.

7 24. Plaintiff's damages, if any, must be reduced by an amount proportionate to the  
8 value of the beneficial use of any product supplied and/or installed by Mollerup.

9 25. Mollerup hereby incorporate by reference those affirmative defenses enumerated  
10 in FRCP 8 as if fully set forth herein. In the event further investigation or discovery reveals the  
11 applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend  
12 its answer to the Complaint to specifically assert the same. Such defenses are incorporated by  
13 reference for the specific purpose of not waiving same.

14 26. Mollerup has had insufficient time to investigate all potential facts as defenses to  
15 this action for purposes of FRCP 11, and as such reserves the right to amend and supplement these  
16 defenses upon additional discovery.

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19 ///

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3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

1           **WHEREFORE**, Defendant prays for relief as follows:

- 2           1.       That Plaintiffs' Complaint be denied and that Plaintiff take nothing by way of this  
3                    action;  
4           2.       That the Court award Defendant its costs;  
5           3.       That the Court award Defendant its reasonable attorneys' fees as may be required  
6                    or permitted by rule or statute; and  
7           4.       For such other and further relief as the Court deems appropriate in the  
8                    circumstances.

9           Dated this 25th day of February, 2025.

10                           **PEEL BRIMLEY LLP**

11                           */s/ Eric Zimbelman*

12                           \_\_\_\_\_  
13                           ERIC ZIMBELMAN, ESQ.  
14                           Nevada Bar No. 9407  
15                           3333 E. Serene Avenue, Suite 200  
16                           Henderson, Nevada 89074-6571  
17                           Telephone: (702) 990-7272  
18                           [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
19                           Attorneys for Defendant  
20                           Mollerup Glass Company

21                           **THIRD PARTY COMPLAINT**

22           Defendant/Third-Party Plaintiff MOLLERUP GLASS COMPANY ("Mollerup"), by and  
23           through its attorneys of record, the law firm PEEL BRIMLEY LLP, alleges and avers as follows:

24                           **PARTIES AND JURISDICTION**

25           1.       Defendant/Third-Party Plaintiff, Mollerup is and was at all times material to this  
26           Third-Party Complaint a Utah corporation in good standing, authorized to conduct business, and  
27           doing business, in Clark County, Nevada. At all times material to this Third-Party Complaint,  
28           Mollerup maintained and currently maintains a Nevada Contractor License, license number  
                  0053326 (C-8 Glass and Glazing).

1           2. Defendant/Third-Party Plaintiff is informed and believes, and therefore alleges  
2 that Third-Party Defendant NORTHWESTERN INDUSTRIES-ARIZONA, INC. (hereinafter  
3 referred to as “NWI” or “Third-Party Defendant”) is and was at all times relevant to this action  
4 an Arizona Corporation, authorized to conduct business, and doing business, in Clark County,  
5 Nevada.

6           3. Defendant/Third-Party Plaintiff is informed and believes, and therefore alleges  
7 that The Whiting-Turner Contracting Company (“WTCC”), as Plaintiff in the above and related  
8 action from which this Third-Party Complaint arises is and was at all relevant times (i) a  
9 Maryland corporation authorized to conduct business, and doing business, in Clark County,  
10 Nevada and (ii) a licensed Nevada contractor holding multiple licenses from the Nevada State  
11 Contractors Board, including A (General Engineering) and B (General Building) licenses.

12           4. Defendant/Third-Party Plaintiff is informed and believes, and therefore alleges that  
13 Employers Mutual Casualty Company (“EMCC”) is a an Iowa insurance company with its  
14 principal place of business in Iowa who was named as a Defendant in this action by WTCC.

15           5. Defendant/Third-Party Plaintiff does not know the true names of the individuals,  
16 corporations, partnerships and entities sued and identified in fictitious names as DOES I through  
17 X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X, LOE  
18 LENDERS I through X and TOE TENANTS I through X (collectively, “Doe Third-Party  
19 Defendants”). Defendant/Third-Party Plaintiff alleges that such Doe Third-Party Defendants are  
20 responsible for the damages suffered by Defendant/Third-Party Plaintiff as more fully discussed  
21 under the claims for relief set forth below. Defendant/Third-Party Plaintiff will request leave of  
22 this Honorable Court to amend this Third-Party Complaint to show the true names and capacities  
23 of each such fictitious Third-Party Defendant when Defendant/Third-Party Plaintiff discovers  
24 such information.

25           6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) and 28 U.S.C. §1441  
26 because there is complete diversity of citizenship between all plaintiffs and all defendants, and  
27 the amount in controversy, exclusive of interest, costs, and attorneys' fees, exceeds the sum of  
28 \$75,000.00.

1 7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of  
2 the events giving rise to this action occurred in Nevada and a substantial part of the property that  
3 is the subject of the action is situated.

4 8. Additionally, the claims herein arise out of a contract or other agreement for the  
5 improvement of property or for the construction, alteration or repair of a work of improvement  
6 in Nevada and, pursuant to NRS 108.2453(2), litigation, arbitration or other process for dispute  
7 resolution on disputes arising out of the contract or other agreement may not occur in a state  
8 other than Nevada and may not apply the laws of any state other than Nevada. Accordingly, this  
9 action is subject to and must be reviewed under the substantive laws of Nevada.

10 **GENERAL ALLEGATIONS**

11 9. Third-Party Plaintiffs repeat and reallege each and every allegation contained in the  
12 preceding paragraphs of this Complaint, incorporate them by reference, and further allege as  
13 follows:

14 10. As alleged in WTCC's Complaint (filed on or about December 6, 2024 in the Eighth  
15 Judicial District Court of Nevada and removed to this Court by Mollerup and EMCC), this action  
16 (the "Action") arises out of the parties' participation in the construction of a high-rise  
17 commercial office building (the "Project") owned by the Howard Hughes Corporation or its  
18 affiliated/related entities ("Project Owner") located at 1700 S Pavilion Center Drive, Las Vegas,  
19 Nevada 89135 (the "Property").

20 11. WTCC further alleges that it served as the Project's Construction Manager who  
21 contracted with Summerlin Development, LLC, the Development Manager, for construction of  
22 the Project. WTCC contracted with Defendant/Third-Party Plaintiff Mollerup to provide glass  
23 and glazing, including the installation of insulated glass units ("IGUs") and that EMCC issued a  
24 performance bond, with Mollerup as bond principal, EMCC as bond surety, with respect to  
25 Mollerup's work on the Project.

26 12. As part of its work on the Project, Mollerup solicited and purchased, and Third-Party  
27 Defendant NWI manufactured and provided, the IGUs for installation in the Project pursuant to  
28 plans and specifications provided by the Project Owner and WTCC to Mollerup and NWI.

1 Before providing IGUs to the Project, and before Mollerup installed the IGUs in the Project,  
2 Mollerup provided NWI with the project specifications, including project-specific ASTM  
3 requirements. NWI confirmed that it could and would meet all such criteria.

4 13. Before providing IGUs to the Project, and before Mollerup installed the IGUs in the  
5 Project, NWI provided Mollerup with submittals in accordance with Project plans and  
6 specifications demonstrating NWI's intended compliance with such plans and specifications (the  
7 "Submittals"). Mollerup in turn provided the Submittals to WTCC and WTCC provided the  
8 Submittals to the Development Manager, Project Owner, and their designers and others in privity  
9 with them for approval, which approval was given before NWI manufactured the IGUs and  
10 before Mollerup commenced its work on the Project.

11 14. In selecting NWI to manufacture the IGUs, Mollerup reasonably relied in good faith on  
12 NWI's skill, expertise, experience, and reputation, as well as the Submittals provided by NWI  
13 and their approval the Development Manager, Project Owner, and their designers and others in  
14 privity with them. Additionally, NWI expressly warranted (to Mollerup, WTCC and the Project  
15 Owner) its workmanship and materials and specifically and expressly warranted that the  
16 "insulated glass units shall be free of material and workmanship defects" for a period of 10 years  
17 from date of manufacture and under normal conditions.

18 15. Among other activities specific to the Project and during its participation in the Project,  
19 NWI (i) provided Mollerup with fabrication reports and mock-up glass on multiple occasions,  
20 (ii) engaged in Project meetings to discuss, among other things, preplanning for the project  
21 shipment, travel, fabrication and installation methods that will be utilized, (iii) provided advice  
22 and direction on shipment of glass as relates to Utah, California and Nevada and special  
23 considerations for the capillary tubes within the IGUs. NWI also arranged for and participated  
24 in delivery of the IGUs to Utah, California and Nevada as part of the manufacturing and  
25 installation process.

26 16. Despite the IGUs' apparent conformance to the plans and specifications as confirmed by  
27 the Submittals and NWI's warranties, beginning several months after the IGUs had been  
28 installed, WTCC began advising Mollerup of periodic IGU breakages (the "Breakages").

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3333 E. SERENE AVENUE, STE. 200  
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1 Mollerup in turn advised NWI of the Breakages and demanded that NWI honor its warranties  
2 with respect to the Breakages. NWI refused or ignored all such requests and Mollerup was  
3 required to and did provide and install replacement IGUs to the Project as requested by WTCC  
4 for all such Breakages.

5 17. Although the Breakages constituted a small fraction of the total number of IGUs installed  
6 by Mollerup in the Project, WTCC demanded (ostensibly at the instance of the Project Owner)  
7 that Mollerup replace each and every ICU on the Project (the “Total Replacement”). Although  
8 Mollerup considers such a demand to be unreasonable and a matter of economic waste, Mollerup  
9 was and is nonetheless exposed to potential liability to WTCC for the cost of the Total  
10 Replacement in addition to and/or including the cost of the repair and replacement of the  
11 Breakages incurred to date.

12 18. Mollerup is informed and believes and therefore alleges that the defects and damages  
13 claimed by WTCC involve alleged defects in, damage to, or destruction of property relating to  
14 the Project. Mollerup is further informed and believes, and thereon alleges, that in the event  
15 WTCC recovers damages against Mollerup, said damages were caused by NWI arising out of  
16 and connected with the performance of its express, implied and/or equitable obligations to  
17 Mollerup.

18 19. In response to WTCC’s demand for repair and replacement of the Breakages, as well as  
19 its demand for Total Replacement, Mollerup repeatedly made demand upon NWI that NWI  
20 provide and/or participate in the cost of the Total Replacement and to defend, indemnity and  
21 hold Mollerup harmless from and against WTCC’s claims and demands as made herein. Despite  
22 NWI’s express, implied and/or equitable obligations to Mollerup, NWI refused and/or failed to  
23 respond to Mollerup’s demands.

24 **FIRST CAUSE OF ACTION**  
25 **(Express Indemnity)**

26 20. Mollerup repeats and realleges each and every allegation contained in the preceding  
27 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

28 21. Mollerup is informed and believes and thereon alleges NWI entered into one or more

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1 written agreements with Mollerup, wherein NWI agreed to design, engineer, develop,  
2 manufacture, fabricate, construct, install and supply labor, materials and components for the  
3 IGUs and the Subject Property, maintain insurance covering property damage, defend, hold  
4 harmless and indemnify Mollerup for any claim arising from its work and materials, and entitling  
5 Mollerup to recover its attorney fees and costs

6 22. Mollerup is informed and believes and thereon alleges the defects and damages claimed  
7 by WTCC involve alleged defects in, damage to, or destruction of property, and Mollerup further  
8 is informed and believes, and thereon alleges, that in the event WTCC recovers damages against  
9 Mollerup, said damages were caused by NWI arising out of and connected with the performance  
10 of NWI's obligations pursuant to those agreements herein referred to and entered into by NWI \

11 23. Mollerup has demanded, and by this action demands, that NWI defend, release, hold  
12 harmless, and indemnify Mollerup for any liability, and the resulting sums to be paid, if any, that  
13 are assigned to Mollerup due to judgment on, or settlement of, the allegations in the Action.

14 24. Mollerup is informed and believes and thereon alleges that NWI has failed and/or refused  
15 to, and continues to fail and refuses to, defend, release, hold harmless, and indemnify Mollerup  
16 herein.

17 25. Mollerup is entitled to express indemnity, including costs and attorney fees, according to  
18 proof at the time of trial, from NWI pursuant to the terms of the agreements entered into between  
19 Mollerup and NWI but in an amount no less than \$75,000.00.

20 26. Mollerup has been required to engage the services of an attorney to defend the Action  
21 and prosecute this Third-Party Complaint, and is entitled to recover from NWI its reasonable  
22 costs, attorney's fees and interest therefor.

23 **SECOND CAUSE OF ACTION**  
24 **(Breach of Contract)**

25 27. Mollerup repeats and realleges each and every allegation contained in the preceding  
26 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

27 28. Mollerup is informed and believes, and thereon alleges that pursuant to the terms of said  
28 written agreements, NWI undertook obligations, including but not limited to, maintaining



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3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

1 liability insurance policies, naming Mollerup as an additional insured under its respective  
2 policies of liability insurance, indemnifying Mollerup, defending Mollerup, and providing its  
3 products and materials and performing its work in a good and workmanlike manner in  
4 accordance with the contract, plans and specifications for the Subject Property.

5 29. Mollerup has fully performed all conditions, covenants and promises required of it to be  
6 performed in accordance with the terms and conditions of said written agreements.

7 30. Mollerup is informed and believes and thereon alleges that NWI has breached said  
8 written agreements by refusing and failing to comply with its contractual obligations to maintain  
9 liability insurance, to name Mollerup as an additional insured under said policies of liability  
10 insurance, to indemnify Mollerup, to defend Mollerup, and considering WTCC's allegations  
11 arguendo, which Mollerup denies, to provide its products and materials and to perform its work  
12 in a good and workmanlike manner, without defects or damages, and in accordance with said  
13 agreements.

14 31. As a direct and proximate result of NWI's breaches of contract, Mollerup has been  
15 damaged in a sum that exceeds \$75,000.00.

16 32. Mollerup has been required to engage the services of an attorney to defend the Action  
17 and prosecute this Third-Party Complaint, and is entitled to recover from NWI its reasonable  
18 costs, attorney's fees and interest therefor.

19 **THIRD CAUSE OF ACTION**  
20 **(Equitable Indemnity)**

21 33. Mollerup repeats and realleges each and every allegation contained in the preceding  
22 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

23 34. Mollerup, by way of its Answer to WTCC's Complaint, has denied and continues to deny  
24 WTCC's allegations and has asserted by way of its Answer the appropriate affirmative defenses.

25 35. In the event, however, the trier of fact concludes Mollerup is liable to WTCC, or if  
26 Mollerup should enter into a settlement or compromise with WTCC, Mollerup alleges that any  
27 responsibility, settlement or compromise on the part of Mollerup will be due to the negligence  
28 and/or fault of NWI.

1 36. By reason of the foregoing, if WTCC should recover judgment against Mollerup or if  
2 Mollerup should enter into a settlement or compromise with WTCC, then Mollerup shall be  
3 entitled to judgement in a like amount, in whole or in proportion to fault, for indemnity over and  
4 against NWI; and in addition, Mollerup will be entitled to recover from NWI all costs, expenses  
5 and attorneys' fees that Mollerup incurs in the preparation and presentation of its defense of the  
6 principal action and in the preparation, presentation and prosecution of this Third-Party  
7 Complaint.

8 **FOURTH CAUSE OF ACTION**  
9 **(Breach of Express Warranty)**

10 37. Mollerup repeats and realleges each and every allegation contained in the preceding  
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 38. The written agreements by and between Mollerup and NWI provide the description of  
13 the products and materials to be provided and work to be performed by NWI as well as the  
14 guarantee and warranty of said products, materials, and work.

15 39. Mollerup relied upon such warranties and believed, in good faith, that the Project would  
16 comply with the approved plans and specifications for the construction of the Project and would  
17 be free from defective construction, workmanship and/or damages.

18 40. Mollerup has fully performed all conditions and promises required on its part to be  
19 performed in accordance with the terms and conditions of the underlying written agreements.

20 41. Mollerup has provided notice, or by this Third-Party Complaint provides notice, to NWI,  
21 of claims asserted by WTCC which Mollerup denies, but that would trigger the warranty  
22 provisions contained within the written agreements.

23 42. Mollerup has undertaken a defense of the matter in question and has incurred expenses  
24 in defense of the claims; therefore, Mollerup alleges that it is entitled to judgement over and  
25 against NWI for all sums that Mollerup incurs, if any, by reason of any judgment, settlement and  
26 expense of litigation, including reasonable attorney fees and costs, as provided by the contract  
27 agreements.

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HENDERSON, NEVADA 89074  
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**FIFTH CAUSE OF ACTION**  
**(Breach of Implied Warranty)**

43. Mollerup repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

44. Mollerup is informed and believes and thereon alleges NWI impliedly warranted the IGUs were designed and constructed in a reasonable and workmanlike manner and that they were of merchantable quality and safe and fit for the foreseeable or intended use.

45. Mollerup relied upon NWI's skill and judgment.

46. WTCC has alleged in the Action that Mollerup is somehow liable for the damages alleged, which Mollerup denies, and should Mollerup be adjudged liable or enter into a settlement with WTCC, then Mollerup is informed and believes and upon such information and belief alleges in such event the proximate cause of WTCC's damages was NWI's breach of warranty of merchantable quality, design, and/or construction in a reasonably workmanlike manner, safe and fit for its foreseeable and intended use.

47. Mollerup has notified NWI appropriately and also intends this Third-Party Complaint to constitute further notice to NWI of the breach of said implied warranty.

48. As a direct and proximate result of the breach of implied warranty by NWI, Mollerup has incurred and continues to incur considerable expenses in defending this suit and may have to pay all or part of any recovery realized by WTCC.

**SIXTH CAUSE OF ACTION**  
**(Declaratory Relief Regarding Duty to Defend)**

49. Mollerup repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

50. An actual controversy exists between Mollerup and NWI regarding their rights and liabilities with respect to any ultimate responsibility to WTCC, if any, and with respect to the rights of Mollerup to receive, or duty of NWI to provide, a defense to Mollerup; Mollerup contends that if WTCC's claims as alleged arise out of or in any manner are connected to the work, materials or services provided by NWI or the contracts with Mollerup, then NWI has an obligation to defend Mollerup without, and before, any determination of the liability of Mollerup

1 or NWI for the damages alleged by WTCC. Mollerup is informed and believes and thereon  
 2 alleges that NWI contends to the contrary, and therefore, an actual controversy exists relative to  
 3 the legal rights and duties of the respective parties pursuant to their agreements, which  
 4 controversy Mollerup requests the Court to resolve.

5 **SEVENTH CAUSE OF ACTION**  
 6 **(Declaratory Relief Regarding Duty to Indemnify)**

7 51. Mollerup repeats and realleges each and every allegation contained in the preceding  
 8 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

9 52. An actual controversy exists between Mollerup and NWI regarding their rights and  
 10 liabilities with respect to any ultimate responsibility for WTCC's claims and with respect to the  
 11 right to receive, or duty to give, indemnification in whole or in proportion to their comparative  
 12 fault; Mollerup contends that if it suffers judgement in the action brought by WTCC, or if it pays  
 13 monies by way of reasonable compromise of said claim, then Mollerup is entitled to be  
 14 indemnified by NWI, and entitled to judgment over and against NWI to the extent of Mollerup's  
 15 financial responsibility to WTCC, if any, and for all fees and costs incurred in defense of  
 16 WTCC's claims.

17 53. Mollerup is informed and believes and thereon alleges that NWI contends to the contrary;  
 18 therefore, an actual controversy exists relative to the legal rights and duties of the respective  
 19 parties pursuant to their written agreements, which controversy Mollerup requests the Court to  
 20 resolve.

21 **EIGHTH CAUSE OF ACTION**  
 22 **(Declaratory Relief Regarding Duty to Duty to**  
 23 **Name Mollerup as Additional Insured)**

24 54. Mollerup repeats and realleges each and every allegation contained in the preceding  
 25 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

26 55. An actual controversy exists between Mollerup and NWI regarding their rights and duties  
 27 in that Mollerup contends NWI was required to name Mollerup as an additional insured under  
 28 the policies of insurance provided by the NWI's insurers.

///  
 28

1 56. Mollerup is informed and believes and thereon alleges that NWI contends to the contrary;  
2 therefore, an actual controversy exists relative to the legal rights and duties of the respective  
3 parties pursuant to their written agreements, which controversy Mollerup requests the Court to  
4 resolve.

5 **NINTH CAUSE OF ACTION**  
6 **(Contribution)**

7 57. Mollerup repeats and realleges each and every allegation contained in the preceding  
8 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

9 58. Mollerup is not responsible legally, or otherwise, for the damages or defects alleged by  
10 WTCC in the Action. Despite this, Mollerup has become exposed to potential liability, in whole  
11 or in part, for the damages claimed by WTCC in the Action. Mollerup has also become exposed  
12 to, has incurred, and is continuing to incur expenses investigating and defending the claims  
13 asserted by WTCC in the Action.

14 59. In the event the trier of fact concludes that Mollerup is liable to WTCC, Mollerup alleges  
15 that any responsibility found on its part, which it denies, will be due to the negligence and/or  
16 fault of NWI.

17 60. By reason of the foregoing, if WTCC should recover judgment against Mollerup, then  
18 Mollerup will be entitled to contribution over and against Third-Party Defendant NWI for all  
19 such amounts the trier of fact may determine were the result of the acts or omissions of Mollerup.  
20 Mollerup will also be entitled to contribution over and against NWI for costs, expenses, and  
21 attorneys' fees that Mollerup incurred in the preparation and presentation of the defense of the  
22 Action, and in the preparation, presentation and prosecution of this Third-Party Complaint in an  
23 amount no less than \$75,000.00.

24 61. Mollerup has been required to engage the services of an attorney to defend the Action  
25 and prosecute this Third-Party Complaint, and is entitled to recover from NWI its reasonable  
26 costs, attorney's fees and interest therefor.

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PEEL BRIMLEY LLP  
 3333 E. SERENE AVENUE, STE. 200  
 HENDERSON, NEVADA 89074  
 (702) 990-7272 ♦ FAX (702) 990-7273

## **TENTH CAUSE OF ACTION**

### **(Apportionment)**

62. Mollerup repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

63. Mollerup is not responsible legally, or otherwise, for the damages or defects alleged by WTCC in the Action. Despite this, Mollerup has become exposed to potential liability, in whole or in part, for the damages claimed by WTCC in the Action. Mollerup has also become exposed to, have incurred, and is continuing to incur expenses investigating and defending the claims asserted by WTCC in the Action.

64. In the event the trier of fact concludes that Mollerup is liable to WTCC, Mollerup alleges that any responsibility found on its part, which it denies, will be due to the negligence and/or fault of Third-Party Defendant, NWI.

65. By reason of the foregoing, if WTCC should recover judgment against Mollerup, then Mollerup will be entitled to apportionment over and against Third-Party Defendant NWI for all such amounts the trier of fact may determine were the result of the acts or omissions of NWI. Mollerup will also be entitled to apportionment over and against NWI for costs, expenses, and attorneys' fees that Mollerup incurred in the preparation and presentation of the defense of the Action, and in the preparation, presentation and prosecution of this Third-Party Complaint.

66. Mollerup has been required to engage the services of an attorney to defend the Action and prosecute this Third-Party Complaint, and is entitled to recover from NWI its reasonable costs, attorney's fees and interest therefor in an amount no less than \$75,000.00..

## **ELEVENTH CAUSE OF ACTION**

### **(Negligence)**

67. Mollerup repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

68. Third-Party Defendant NWI owed and breached a duty of care to Mollerup and any other parties affected by its negligent manufacture of the IGUs (as alleged by WTCC). Mollerup has been damaged, an amount no less than \$15,000.00, by such negligence in the form of (i) exposure to potential liability, in whole or in part, for the damages claimed by WTCC in the Action and

(ii) costs, expenses, and attorneys' fees that Mollerup incurred in the preparation and presentation of the defense of the Action, and in the preparation, presentation and prosecution of this Third-Party Complaint in an amount no less than \$75,000.00.

69. Mollerup has been required to engage the services of an attorney to defend the Action and prosecute this Third-Party Complaint, and is are entitled to recover from NWI its reasonable costs, attorney's fees and interest therefor.

**TWELFTH CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing)**

70. Mollerup repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

71. Pursuant to the foregoing agreements, contracts, guarantees and warranties for design, development and construction of the Project and provision of the IGUs by NWI, NWI was obligated to act and perform the duties and obligations created therein fairly and in good faith to permit satisfaction and completion of the purpose of their agreements, contracts, guarantees and warranties.

72. Pursuant to the foregoing, if the Subject Property and/or the IGUs are adjudged defectively designed, developed and/or constructed, as alleged by WTCC, which Mollerup denies, NWI breached its individual covenants of good faith and fair dealing, thereby causing damages to Mollerup by virtue of WTCC's allegations, and for which NWI is liable to Mollerup

73. Mollerup has been required to engage the services of an attorney to defend the Action and prosecute this Third-Party Complaint, and is are entitled to recover from NWI its reasonable costs, attorney's fees and interest therefor.

**PRAYER FOR RELIEF**

WHEREFORE, Mollerup prays that this Honorable Court enter judgment for Mollerup and against the NWI as follows:

1. For damages in an amount in excess of \$15,000.00;
2. For Third-Party Defendants' reasonable costs and attorneys' fees as damages in an amount in excess of \$15,000.00; and



3. For Third-Party Defendants' reasonable costs and attorney's fees incurred in the prosecution of this Third-Party Complaint;

**CERTIFICATE OF SERVICE**

I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 25th day of February, 2025, I electronically submitted the above and foregoing document, **DEFENDANT MOLLERUP GLASS COMPANY'S ANSWER, AFFIRMATIVE DEFENSES AND THIRD-PARTY COMPLAINT**, to the Clerk's Office using the CM/ECF system for filing and transmittal of Notice of Electronic filing to the CM/ECF registrants

*/s/ Christopher Tertipes*

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An employee of **PEEL BRIMLEY, LLP**

**PEEL BRIMLEY LLP**  
**3333 E. SERENE AVENUE, STE. 200**  
**HENDERSON, NEVADA 89074**  
**(702) 990-7272 ♦ FAX (702) 990-7273**